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From: CN=Erin Foresman/OU=R9/O=USEPA/C=US
Sent: Tue 4/17/2012 6:31:22 PM
Subject: CWA 404 Description in BDCP prelim. admin DEIS
[EIR-EIS Chapter 8 - Water Quality 2-29-12.sflb.pdf](#)
<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>

Hi Mike and Mike,

I'm reading through the BDCP prelim admin DEIS (Chapter 8 Water Quality) and got to the paragraph written on 404. We are providing feedback to the lead federal agencies on the prelim. admin draft and I thought you would be interested in this description. It is pasted below. The sentence highlighted in blue text is interesting as are other statements in the paragraph. I'm just flagging this FYI.

There is a paragraph just below this one on Rivers and Harbors Act. It doesn't mention the levee program, but maybe it isn't necessary in the WQ chapter. I am not reviewing the whole prelim. admin DEIS. These programs could be more accurately described elsewhere. I'll keep looking for descriptions of CWA 404 in other sections that I review to help them improve the document.

Section 404 (p 8-108)

Under CWA Section 404, a program was established to regulate the discharge of dredged and fill material into waters of the United States, including some wetlands via the issuance of NPDES permits. USACE is authorized to issue Section 404 permits. Activities in waters of the United States that are regulated under this program include fills for development, water resource projects (e.g., dams and levees), infrastructure development (e.g., highways and airports), and conversion of wetlands to uplands for farming and forestry. Under Section 404(b)(1) of the CWA, the Least Environmentally Damaging Practicable Alternative (LEDPA) must be identified from among those alternatives considered in detail in the Environmental Impact Statement (EIS)/Environmental Impact Report (EIR). If a federal agency is a partner in the implementation of a project, then the Proposed Action/Project must be recognized as the LEDPA. A Section 404(b)(1) evaluation will be included with the project's Final EIS/EIR pursuant to the CWA, to provide required information on the potential effects of project activities regarding water quality and to provide rationale in support of identifying the LEDPA. The Draft EIR/EIS will be reviewed by concerned members of the public and stakeholders while given the opportunity to provide comments on project alternatives and documentation.

8.2.1.2 Rivers and Harbors Act Section 10

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the U.S. Army Corps of Engineers for the construction of any structure in or over navigable waters of the United States, the excavation/dredging or deposition of material in these waters, or any obstruction or alternation in 35 navigable water. Construction of the BDCP would be subject to regulation under Section 10 of the Rivers and Harbors Act.

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I work a part time schedule (M 7:30a - 4:00p, T - F 7:30a - 2:00p)